

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Kenneth M. Buckland
Serial No.: 09/657,068
Filing Date: September 7, 2000
Confirmation No.: 1585
Group Art Unit: 2616
Examiner: Robert W. Wilson
Title: METHOD AND SYSTEM FOR PROCESSING
 TRAFFIC IN AN ACCESS NETWORK

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

REQUEST FOR PRE-APPEAL BRIEF REVIEW

In response to the Advisory Action mailed March 13, 2007, Applicant respectfully requests a Pre-Appeal Brief review of this Application so that the rejection of the claims and the objections to the Application can be reconsidered prior to submission of an Appeal Brief.

REMARKS

This Request for Pre-Appeal Brief Review is being filed in accordance with the provisions set forth in the Official Gazette Notices of July 12, 2005 and January 10, 2006. Pursuant to the Official Gazette Notices, this Request for Pre-Appeal Brief Review is being filed concurrently with a Notice of Appeal. Applicant respectfully requests reconsideration of the Application in light of the remarks set forth below.

Claims 1, 3-7, 9-12, 14, 15, and 20 currently stand rejected under 35 U.S.C. §102(e) as being anticipated by Keller-Tuberg. Claims 13, 26-33, 35-38, and 40 currently stand rejected under 35 U.S.C. §103(a) as being unpatentable over Keller-Tuberg. Claims 16, 18, and 19 currently stand rejected under 35 U.S.C. §103(a) as being unpatentable over Keller-Tuberg in view of Nagami. In the prosecution of the present Application, the Examiner's rejections and assertions contain clear errors of law, including a failure to establish a prima facie case of anticipation and obviousness. To assist the Panel in the review of this Request for Pre-Appeal Brief Review, Applicant submits the following brief summary for consideration.

In the Advisory Action of March 13, 2007 and the Final Action of December 13, 2006, the Examiner indicates that the Keller-Tuberg patent teaches multiplexing IP traffic from a large number of subscribers without regard to IP destination address or IP path. The Examiner cites col. 2, lines 43-45, of the Keller-Tuberg patent where there is disclosed traffic arriving from a large number of subscribers is multiplexed into a much smaller number of ATM flows. What the Examiner failed to cite is that the Keller-Tuberg patent performs its multiplexing of data flows from one or more subscribers based on the ATM VP/VC identifier. (See col. 3, lines 31-41, of the Keller-Tuberg patent). Thus, the Keller-Tuberg patent teaches

away from aggregating ingress traffic streams into a single combined stream without regard to any path or destination of any packet from any ingress stream as required in the claimed invention. Thus, the Examiner's reliance on the Keller-Tuberg patent is misplaced. No matter how interpreted, the Keller-Tuberg patent fails to teach the features of the claimed invention.

Most notable of the legal errors present in the examination of the Application is a failure of the Final Action of December 13, 2006 to establish a prima facie case of anticipation and obviousness of the claims in the Application rejected under 35 U.S.C. §102(e) and 35 U.S.C. §103(a). With respect to the 35 U.S.C. §103(a) rejections, there has been no mention of the three criteria for a prima facie case of obviousness as spelled out in M.P.E.P. §2143. The Examiner has not cited any language from the prior art that would suggest that the Keller-Tuberg patent can be modified as proposed or combined in any manner with the Nagami patent. The Examiner only provides a baseless subjective and conclusory "it would have been obvious" statement for modifying the Keller-Tuberg patent or combining the Keller-Tuberg patent with the Nagami patent without providing any objective reasoning or citing any evidence of record to support such positions. The Examiner has also not provided any reasons how the proposed modification of the Keller-Tuberg patent and the combination with the Nagami patent would have any expectation of success let alone a reasonable expectation of success. Moreover, the Examiner has failed to show that the proposed modification and combination would even work for its intended purpose according to the claimed invention.

As for teaching the claimed invention, Independent Claims 1 and 20 recite in general an ability to aggregate ingress traffic streams into a single combined traffic stream without regard to any path or destination of any packet from any

ingress traffic stream. By contrast, the Keller-Tuberg patent merely discloses multiplexing traffic from a large number of subscribers into a smaller number of ATM flows. (See col. 2, lines 43-45, of the Keller-Tuberg patent). In addition, the Keller-Tuberg patent discloses multiplexing ATM cells based on the ISP destination or VP/VC identifier for each ATM cell. (See FIGURE 2, multiplexing table, and col. 5, line 66, to col. 6, line 5, of the Keller-Tuberg patent). Thus, not only does the Keller-Tuberg patent fail to disclose multiplexing a plurality of ingress traffic streams into a single combined traffic stream as required by the claimed invention, the Keller-Tuberg patent also fails to perform its multiplexing without regard to any path or destination of any packet from any ingress stream as provided in the claimed invention.

The Examiner asserts that the Keller-Tuberg patent teaches ATM traffic being multiplexed at layer 2 without regard to any path or destination of the IP packet destination address which is at layer 3. There is no support in the Keller-Tuberg patent for this assertion. The Keller-Tuberg patent specifically teaches using path identifiers to multiplex ATM traffic. (See col. 5, lines 56-60, of the Keller-Tuberg patent). Thus, the Keller-Tuberg patent expressly teaches away from a capability of aggregating a plurality of ingress traffic streams into a single combined traffic stream without regard to any path or destination of any packet from any ingress traffic stream as required by the claimed invention. Therefore, Applicant respectfully submits that the claimed invention is not anticipated nor rendered obvious by the Keller-Tuberg patent.

Based on the remarks above, the Keller-Tuberg and Nagami patents are insufficient to support a rejection of the claims. Therefore, Applicant respectfully submits that the claims are patentably distinct from the Keller-Tuberg patent and the proposed Keller-Tuberg - Nagami combination.

CONCLUSION

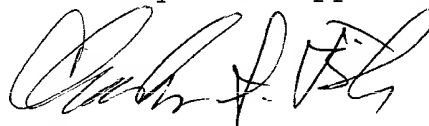
Applicant has now made an earnest attempt to place this Application in condition for allowance. For the foregoing reasons and for other apparent reasons, Applicant respectfully requests allowance of all pending claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicant

A handwritten signature in dark ink, appearing to read 'Charles S. Fish', is written over the printed name.

Charles S. Fish

Reg. No. 35,870

March 19, 2007

Correspondence Address:

2001 Ross Avenue, Suite 600

Dallas, Texas 75201-2980

(214) 953-6507

Customer Number: 05073